82-1106

No. _____

Office - Supreme Court, U.S.
FILED
DEC 30 1982
ALEXANDER L. STEVAS,
CLERK

SUPREME COURT OF THE UNITED STATES

EMORY D. STINE,
Petitioner

vs.

MARY E. CROSS,
Respondent

PETITION FOR WRIT OF CERTIORARI
To The United States Court of Appeals
For The Third Circuit

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QUESTION PRESENTED FOR REVIEW

Whether the doctrine of absolute judicial immunity should be abolished so as to allow the Petitioner in this case a civil remedy for the malicious actions against him by a district justice?

LIST OF ALL PARTIES

The parties to the proceeding are: (1) District Justice Mary E. Cross, by and through her attorney Charles W. Johns, defendant in the Court below and Respondent herein; and (2) Emory D. Stine, plaintiff in the Court below and Petitioner herein.

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REFERENCE TO OPINIONS BELOW

The Order of the Supreme Court of Pennsylvania denying the Petition for Allowance of Appeal dated October 8, 1982, is reproduced in the Appendix at Page A1. The Opinion of the Superior Court of Pennsylvania dated June 25, 1982, affirming the Opinion of the Court of Common Pleas, is reproduced in the Appendix at Page A2. The Memorandum of the Court of Common Pleas dated April 8, 1981, dismissing Petitioner's claim, is reproduced in the Appendix at Page A5.

JURISDICTION

This appeal is brought pursuant to 28 U.S.C.A. § 1254 (1) and Rule 17 of the Rules of this Court. The appeal is from the denial of the Petition for Allowance of Appeal by the Supreme Court of the Commonwealth of Pennsylvania rendered on October 8, 1982, in the case of Emory D. Stine vs. Mary R. Cross, docketed at No. 48 M.D. Allocatur Docket 1982.

STATEMENT OF THE CASE

Petitioner, eighty year old Emory Stine, was maliciously incarcerated in the Dauphin County Prison not for just cause, but because of a continuing dispute between Mr. Stine and Swatara Township, where Mr. Stine resides and where the committing District Justice (Respondent, Mary Cross) presides. Because District Justice Cross ordered Mr. Stine imprisoned in the context of a proceeding before her, she has thus far successfully shielded herself from responsibility for her actions by relying on the

doctrine of judicial immunity. It is Mr. Stine's contention that judicial immunity should be abolished, or at least modified, not only to allow him his only remedy against District Justice Cross, but also to act as a deterrent to further abuses in the future.

This case arose as follows: On November 8, 1978, three citations were issued to Petitioner Stine: (1) operating a golf cart on a highway, (2) not having the golf cart inspected, and (3) driving without a license. On January 4, 1979, Petitioner appeared in court on those charges before District Justice Mary Cross and was found guilty on all three charges. At the end of the hearing, the existence of two zoning citations which had been issued approximately fifteen (15) months earlier, but never executed, were brought to the attention of the court. As a result, District Justice Cross set bond of One Hundred and Fifty Dollars ($150.00), on the Zoning Code citations. Petitioner only had Ninety Three ($93.00), on his person. District Justice Cross gave Petitioner ten (10) minutes to get the balance of the money. Appellant requested the Chief of Police and another officer to take him to his home about a mile away to get the rest of the money. They refused.

Petitioner was taken to Dauphin County Prison where his clothes and personal effects were taken away, and he was given prison clothes and placed in a cell for about three (3) hours until the balance of the bond money was supplied. Petitioner is an eighty (80) year old man, a longtime resident, an owner of real estate in Swatara Township, and had no criminal record.

After a subsequent conviction before District Justice Cross on the Zoning Code violation, Petitioner took an appeal on all five convictions to the Court of Common Pleas of Dauphin County. The

Zoning Code convictions were reversed and the Motor Vehicle Code convictions were affirmed. (The Motor Vehicle Code violations were later remanded by the Superior Court in *Commonwealth vs. Stine,* Pa. Super., 421 A.2d 808 (1980); they were subsequently dismissed.)

As a result of the pain and humiliation suffered by Mr. Stine from District Justice Cross' malicious, willful and illegal acts, a Complaint was filed in the Dauphin County Court of Common Pleas on July 27, 1979. District Justice Cross filed an Answer containing New Matter raising the Doctrine of Judicial Immunity as an absolute bar to the suit. Thereafter District Justice Cross filed a Motion for Judgement on the Pleadings which was answered by Mr. Stine.

On or about March 30, 1981, the Motion for Judgement on the Pleadings was argued before the Honorable William W. Caldwell in the Court of Common Pleas of Dauphin County. The Court sustained District Justice Cross' Motion and the action was dismissed on April 8, 1981.

Petitioner subsequently appealed to the Superior Court of Pennsylvania. In an Opinion filed on June 25, 1982, the Court affirmed the lower court's dismissal of Petitioner's case. Petitioner then petitioned the Supreme Court of Pennsylvania for Allowance of Appeal, which Petition was denied on October 8, 1982.

REASONS FOR ALLOWANCE OF WRIT

Petitioner, Emory Stine, 80 years old, was maliciously incarcerated at the Dauphin County Prison at the order of Respondent, Mary Cross, District Justice for Swatara Township, Dauphin County, Pennsylvania. Mr. Stine's ensuing lawsuit against

District Justice Cross has been successfully avoided thus far through the doctrine of judicial immunity. District Justice Cross has interposed the doctrine of judicial immunity successfully despite the fact that her actions were motivated by provable personal malice against Mr. Stine. Mr. Stine, by this Petition for Certiorari, is respectfully requesting the United States Supreme Court to re-evaluate its stance with respect to judicial immunity, at least with respect to members of the minor judiciary such as District Justice Mary Cross.

At present, all judges at all levels enjoy absolute immunity from liability for damages for their judicial actions not done in the clear absence of all jurisdiction. *Stump vs. Sparkman,* 435 U.S. 349, 55 L.Ed.2d 331, 98 S.Ct. 1099 (1978), reh.den. 436 U.S. 951, 56 L.Ed.2d 795, 98 S.Ct. 2862; *Pierson vs. Ray,* 386 U.S. 547, 18 L.Ed.2d 288, 89 S.Ct. 1212 (1967); *Bradley vs. Fisher,* 13 Wall. 335, 80 U.S. 335, 20 L.Ed. 646 (1872).

In recent years, however, the judiciary has seen fit to abrogate immunities in other areas which, up to that point, were well established. The Court in *Caporossi vs. Atlantic City,* 220 F.Supp. 508 (D.N.J. 1963) affirmed 328 F.2d 620 cert.den. 379 U.S. 822, expressed the view that governmental immunity was "the gaslight of another time" which "must give way to the brightened illumination of today." id at 518. The Court in *United States vs. Moore,* 311 F.Supp. 984, reversed 469 F.2d 788 (1970), cert.den. 93 S.Ct. 1528, 411 U.S. 905, 36 L.Ed. 195, recognized the abolition of parental immunity and the Court in *Honeywell vs. Rogers,* 251 F.Supp. 841 (W.D.Pa. 1966), which adopted the Pennsylvania Supreme Court's decision in *Flagiella vs. Pennsylvania Hospital,* 417 Pa. 486, 208 A.2d 193 (1965), which abolished charitable immunity.

Various justifications have been established which support the doctrine of absolute judicial immunity. This Court in *Bradley, Supra.*, recognized that although unfairness may sometimes result to litigants due to the effects of absolute judicial immunity, it nevertheless prevails because it is thought to be in the best interests of "the proper administration of justice...[for it allows] a judicial officer, in exercising the authority vested in him [to] be free to act upon his own convictions without apprehension of personal consequences to himself." *Bradley vs. Fisher,* 13 Wall. 335, 347, 80 U.S. 335, 347, 20 L.Ed. 646 (1872). The Court further stated that judicial immunity served to bar the inquiry into judicial motives; if judges' motives could be inquired into, they would be subjected to "vexatious" litigation whether or not the motives actually existed. This Court in *Pierson, Supra.*, stated that the doctrine doesn't exist for the "protection or benefit of the malicious or corrupt judge, but for the benefit of the public whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of the consequences." *Pierson vs. Ray,* 386 U.S. at 554, citing *Scott vs. Stansfield,* L.R. 3 Ex. 220, 223 (1868), quoted in *Bradley vs. Fisher, Supra.* at 350. This Honorable Court further noted that a judge's errors could be corrected on appeal and a judge should not have to fear the retaliatory effects that unsatisfied litigants may instigate by alleging malice or corruption. Such a burden on judges could contribute to intimidation and could therefore hinder fearless decision making. 386 U.S. at 554.

Certainly the policy of absolute judicial immunity has been successful in achieving the goals enumerated above. However, the absolute nature of judicial immunity has also had the unfortunate effect of shielding corrupt judges from responsibility

and liability for improper actions they take in office even when those actions can be proven to be motivated by personal malice. To this extent, judges, who are sworn to uphold the law, are in fact above the law. It is respectfully submitted that the doctrine of judicial immunity should be modified to strike a balance between the goals sought by it and the rights of persons aggrieved by the malicious actions of corrupt judges.

Such a balance has already been achieved by this Court in *Harlow vs. Fitzgerald*, _____ U.S., _____, 73 L.Ed.2d 396, 102 S.Ct. 2727 (1982). In that case, absolute immunity was not extended to Senior Aides and Advisors to the President of the United States, but rather, they were shielded by a qualified immunity. Qualified immunity provides a balance between a remedy to protect citizens' rights and the desire to encourage the vigorous exercise of official authority and to protect officials who must exercise discretion in the course of their duties. *Sheurer vs. Rhondis*, 416 U.S. 232, 40 L.Ed.2d 90, 94 S.Ct. 1683 (1974); *Butz vs. Economou*, 438 U.S. 478, 57 L.Ed.2d 895, 98 S.Ct. 2894 (1978).

The arguments asserted by the proponents of absolute immunity in *Harlow, Supra.*, are essentially the same as those currently relied upon to justify absolute immunity for judges. Absolute immunity was rejected nevertheless in favor of qualified immunity. In justifying the qualified immunity standard, this Court in *Harlow* noted that in situations of abuse of office, an action for damages may be the only avenue for vindication of constitutional guarantees, 73 L.Ed.2d 407-08. This Court also recognized, however, that there may be unfounded claims against these individuals as a resultant cost of litigation expenses, diversion of official energy from pressing public issues, deterrence of qualified indi-

viduals from accepting public positions and, further, that an official's fear of being sued might inhibit him from fearless discharge of his duties. Id at 408. Nevertheless, the Court still felt compelled to extend only qualified immunity and not absolute immunity to Presidential Aides, noting that unsubstantial claims could be weeded out before they got to trial utilizing the Summary Judgement Rules. To enable the judiciary to utilize Rule 56 of the Federal Rules of Civil Procedure, the Court developed a test which eliminated possibilities of a subjective determination of abuse of office and formulated their test on an objective standard from which Summary Judgement could be granted, noting that "reliance on the objective reasonableness of an official's conduct as measured by reference to clearly established law should avoid excessive disruption of government and permit the resolution of many unsubstantial claims on Summary Judgement." Id at 410. It is respectfully submitted that the same rationale that the Court utilized in *Harlow, Supra.*, to extend qualified immunity to Presidential Aides, who also possess wide discretionary functions, should be extended to judges as well. As Chief Justice Burger noted in his dissenting opinion, "Are the lowest ranking of 27,000 or more judges...entitled to greater protection than two Senior Aides of the President?" Id at 416.

This Court made a very important observation in its recent decision in *Harlow* by recognizing that the decisions involving immunities involved a functional approach, noting that immunities extend no further than can be justified. Id at 406. The goals sought to be achieved by absolute judicial immunity are no longer justified in light of qualified immunity. By extending qualified immunity to judges, the goals sought to be achieved by absolute immunity will be

better achieved. In *Harlow*, an objective standard was formulated to enable the Court to extend qualified immunity to Presidential Aides. Such an objective standard can also be formulated which will enable the judiciary to effectively extend qualified immunity to judges. Presently, the only circumstance under which absolute immunity is not applied to judges is when a violation of jurisdiction has occurred, clearly an objective standard which precludes the immunity privilege. This objective standard should be replaced by a more encompassing standard. It is respectfully suggested that this standard should be the objective reasonableness of the judges' conduct as measured by reference to the judicial norms in the jurisprudential arena. This standard is very similar to the objective reasonable man standard utilized in Tort Law. By applying a more indepth objective standard, the evils of our now present absolute immunity would be abolished and the goals sought to be achieved would be enhanced. Instituting a qualified judicial immunity of policy based on objective criteria will prohibit the feared inquiry into judicial motives and will permit the resolution of many unsubstantial claims by enabling the judiciary to utilize Summary Judgement Rules to eliminate the possibility of judges being subjected to "vexatious" litigation. Qualified judicial immunity will enhance the proper administration of justice by demanding more reflective decisions which will serve to safeguard not only the public interest, but also that of the litigants. Qualified judicial immunity would not tolerate a usurpation or authority nor a clear abuse of the judicial position and would eradicate the main evil that the now present absolute immunity tolerates: corrupt or malicious members of the judiciary.

As applicable to judicial immunity, qualified immunity is the best attainable accomodation of

competing values. It protects the public's interest by safeguarding the proper administration of justice while eliminating a safe harbor for lawless conduct, yet qualified immunity will still provide judges the flexibility necessary to exercise their function with independence and without fear of unfounded litigation.

In the case before this Court, it is submitted that the conduct of Mary Cross, who refused an 80-year old man an opportunity to obtain the balance of bond money or to modify the bond itself to an amount he could then meet, was a prima facia violation of judicial norms prevailing in the judicial community. To protect such conduct would be to enable an individual, masquerading in the guise of a judge, to effectively retaliate against an individual which she had a personal vendata against without retribution.

As the Court in *Butz, Supra.,* alluded to, the greater power of high officials, affords a greater potential for a regime of lawless conduct. Up until now, our judiciary, although they occupy a position which carries enormous power, have been extended a virtual absolute immunity from suit no matter how violative their conduct was. It is respectfully submitted in a society such as ours an individual in the position of a judge should not possess an absolute shield but instead possess a shield with qualifications so as to maintain an effective but not inhibitive system of policing our judiciary.

The arguments presented here in favor of abrogating absolute judicial immunity and replacing it with qualified immunity have even more impact when they are put forth with respect to the minor judiciary (magistrates, justices of the peace, etc.), such as District Justice Cross. At the very least, members of the minor judiciary should be clothed not with absolute immunity but with qualified immunity.

CONCLUSION

Presently, judges enjoy absolute judicial immunity. Although this doctrine has been well established for many years, it is respectfully requested that absolute judicial immunity give way to a standard of qualified immunity. The goals sought to be accomplished by absolute immunity can be better accomplished by a qualified immunity standard, while simultaneously eliminating the evils that absolute immunity tolerates. In light of recent decisions extending qualified immunity, the existence of an absolute judicial immunity can no longer be functionally or analytically justified. As applied to judges, qualified immunity is the best attainable accomodation of competing values. It protects the public's interest by safeguarding the proper administration of justice while eliminating a safe harbor for lawless conduct; yet judicial immunity still provides judges the flexibility necessary to exercise their function with independence and without fear of unfounded litigation.

RESPECTFULLY SUBMITTED:

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APPENDIX

JUDGMENT ORDER OF THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

NO. 48 M.D. ALLOCATUR DOCKET 1982

EMORY D. STINE,
Petitioner

vs.

MARY E. CROSS,
Respondent

Appeal from the Order of the Superior Court Entered on June 25, 1982 in the case docketed to No. 146 Harrisburg, 1981

Order denying the Petition for Allowance of Appeal dated October 8, 1982

ORDER DENIED
Per Curiam

J. 2149/81 - 1

EMORY D. STINE,
Appellant

vs.

MARY E. CROSS,
Appellee

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 146 Harrisburg, 1981

EMORY D. STINE,
Appellant

vs.

TOWNSHIP OF SWATARA and the COMMISSIONERS OF THE TOWNSHIP OF SWATARA, and ROBERT L. WALMER, and DONALD H. HORNER,
Appellees

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 147 Harrisburg, 1981

Appeal from the Order of the Court of Common Pleas, Civil Action Law, No. 3280 S, 1979 and No. 59 S, 1980.

BEFORE: BROSKY, WIEAND AND MONTEMURO, JJ.

MEMORANDUM OPINION:

FILED: June 25, 1982

These actions are consolidated for appeal. The basis of both suits arose out of the same incident.

On November 8, 1978, three citations were issued to appellant Stine: (1) operating a golf cart on a highway, (2) not having the golf cart inspected, and (3) driving without a license. On January 4, 1979, appellant appeared in court on those charges before District Justice Mary Cross and was found guilty on all three charges. At the end of the hearing, the existence of two zoning citations which had been issued approximately fifteen (15) months earlier, but never executed, were brought to the attention of the court. As a result, District Justice Cross set a bond of one hundred and fifty ($150) dollars on the Zoning Code citations. Appellant only had ninety-three ($93) dollars on his person. District Justice Cross gave appellant ten minutes to get the balance of the money. Appellant requested the Chief of Police and another officer to take him to his home about a mile away to get the rest of the money. They refused.

Appellant was taken to Dauphin County Prison where his clothes and personal effects were taken away, and he was given prison clothes and placed in a cell for about three hours until the balance of the bond money was supplied. Appellant is an 80 year old man, a longtime resident, and an owner of real estate in Swatara Township.

After a subsequent conviction before District Justice Cross on the Zoning Code Violation, appellant took an appeal on all five convictions to the Court of Common Pleas of Dauphin County. The Zoning Code convictions were reversed and the Motor Vehicle Code convictions were affirmed.

Appellant Stine then instituted two actions in trespass separately against District Justice Cross and the Township of Swatara, the Commissioners of the Township of Swatara, Robert L. Walmer and David H. Horner. Judgment on the pleadings was granted and the case dismissed as to appellee Cross.

In the other action, preliminary objections in the nature of a demurrer was granted as to appellees and the case was dismissed. While not sanctioning the conduct of appellee Cross, we affirm the Orders of the court below.

It is well settled that judicial immunity is an absolute bar to an action against a judicial officer for his acts, unless it can be shown that the officer was acting in the clear absence of all jurisdiction. See *Petition of Dwyer,* 486 Pa. 585, 406 A.2d 1355 (1979), *Petition of McNair,* 324 Pa. 48, 187 A.493 (1936), *Strump v. Sparkman,* 435 U.S. 815, 98 S.Ct. 1099, 55 L Ed.2d. 331 (1978) Rehearing Denied. 436 U.S. 951, 98 S.Ct. 2862, 56 L Ed.2d 795 (1978). There is no allegation here that appellee Cross did not have jurisdiction over the matters before her court. Because she was acting within her jurisdiction, her acts, however improper, are absolutely immune from civil liability.

Regarding the second action, the complaint fails to state a cause of action against any of the appellees. The Township Commissioners, as high public officials, are immune from liability under the facts of this case. *Matson v. Margiotti,* 371 Pa. 188, 88 A.2d 892 (1952). It is also clear that Mr. Walmer escorted appellant to jail pursuant to the order of appellee Cross, which as previously discussed, she clearly had the authority to issue.

While the action of District Justice Cross may not have been necessary to secure the appearance of appellant at trial, we conclude that those actions fail to give rise to liability on the part of the appellees.

Orders affirmed.

EMORY D. STINE, *Plaintiff*	IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA
vs.	CIVIL ACTION - LAW
MARY E. CROSS, *Defendant*	No. 3280 S 1979

MEMORANDUM

This action is brought against a district magistrate and seeks damages for humiliation caused by the imprisonment of plaintiff in connection with his conviction of certain summary offenses under the Motor Vehicle Code. The defendant has filed a motion for judgment on the pleadings based upon the defense of judicial immunity, and plaintiff does not dispute that defendant is a district justice or that the subject matters are within her jurisdiction.

We have concluded the motion must be granted. Plaintiff relies upon cases which involve the abrogation of certain aspects of sovereign (executive) immunity. These cases have not impaired the sanctity of *judicial* immunity where the proceeding is within the jurisdiction of the officer involved and the act complained of is a function normally performed in the discharge of judicial duties.[1] The United States Supreme Court decision in *Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099 (1978) is controlling and will be followed by us in ruling on defendant's motion.

William W. Caldwell, J.

Date: April 8, 1981

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[1] From the pleadings and briefs it is fair to state that in the instant case Mrs. Cross set bond for the defendant ($150.00) following his arrest on two zoning citations. This occurred in her office at the conclusion of a hearing on certain unrelated motor code violations. Defendant asked permission to be released to go home to get the necessary funds but his request was refused. When he was unable or unwilling to otherwise post bail he was taken to the Dauphin County Prison where he was incarcerated for about three hours before making bail.